

6th CUTS-CIRC Biennial Conference on Competition, Regulation and Development

MAKING COMPETITION AND REGULATORY REGIMES MATTER IN INCREASINGLY ONLINE DEVELOPING WORLD

01-02

December 2019

Multipurpose Hall, Kamaladevi Complex
India International Centre
New Delhi

#CUTSBiennial @CUTSCCIER

Objective

More than half of the world is online today. The internet economy is changing lives in developing economies in a manner never before imagined. Digitisation fuelled innovation is creating innumerable income generation opportunities while also stoking fears of abuse of power and unfair treatment to consumers. The competition and regulatory regimes in developing economies, formulated for predominantly offline world, are trying to evolve and keep up with the times.¹

Given this background, the 6th CUTS-CIRC Biennial Conference on Competition, Regulation and Development (Conference) will discuss the current state of competition and regulation regimes in developing economies, challenges posed and opportunities offered by increasingly online developing world, and policy and implementation innovations required to make them matter for sustainable development.

Context

Increased internet penetration has paved the way for new opportunities and innovative ideas to grow at a phenomenal rate. Data and information are shaping businesses and ways humans communicate.

At the same time, the online economy is increasingly witnessing consolidation with few large players left to cater for large swaths of consumers. Practices such as zero pricing, deep discounting, acquisition of potential competitors, vertical and horizontal tie-ups, exclusive access to data, consumer retention, *et al*, are becoming common place across sectors.

While benefitting consumers, particularly in short-term, these practices allegedly adversely impact innovation, growth of small and medium enterprises, and availability of decent employment opportunities, especially in developing economies. Concerns regarding loss of privacy, data breaches, cyber-attacks, misinformation, violation of

¹ For instance, India has very recently constituted a Competition Law Review Committee to examine the scope of competition regime in the country. Competition agencies in Bangladesh and Pakistan have faced similar issues. See, Parveer Singh Ghuman & Udai S. Mehta, 2019. "Institutional Design of Select Competition Authorities in South Asia: Identifying Challenges and Opportunities," Review of Industrial Organization, Springer; The Industrial Organization Society, vol. 54(2), pages 283-326, March. Regulatory agencies are also facing difficulties in fitting new business models in their existing regulatory framework.

ethics and human rights, have amplified. This has increased inequality and mistrust on markets.

Optimal competition and regulation are essential for fair markets to function efficiently. The pathways to achieve these may differ with sectors and countries. Globally, competition and regulatory agencies are continuously facing difficulties in countering challenges posed by online economy and leverage it for sustainable development. Their relevance and role, as traditionally understood, is being questioned². It is not clear if they possess adequate tools and capacity to usher reforms and benefit markets. Increasingly disruptive ideas such as breaking up of large corporates, setting up of new regulators, considering data as a source of dominance, and recognising dominance as problematic, are being discussed as possible solutions, suggesting possible shortfall in traditional remedies.

In this scenario, there is a need to examine if competition and regulatory regimes are flexible enough to allow intervention in an intelligent and supple manner, when the rules tailored to deal with 'old world' problems are applied to 'evolving online markets.' It also needs to be analysed if this is the most efficient approach, or if there is a need to reframe or adapt the existing legislative and regulatory framework. Robust metrics to review practices in the online economy and reach a balanced conclusion are needed now more than ever.

Competition and regulatory regimes in developing economies face far greater challenges as they need to deal with increasingly complex challenges posed by online economy without being fully matured. At the same time, in some cases, they might have the opportunity to intervene before it is too late. However, any misstep in these countries may cause greater damage to economic development and social cohesion. Consequently, such regimes need to be quickly but cautiously evolved into vigorous, disciplined, and coherent regimes to fairly tackle challenges posed by online economy without giving up on the benefits it offers. They need to develop tools to gather and analyse evidence to determine 'when' and 'how much' to intervene in the markets.

In this context, the Conference will discuss how best competition and regulatory regimes in developing economies can be equipped to deal with challenges posed in an increasingly online world, leverage opportunities offered by it, deliver on their mandate of making fair markets function, and matter for sustainable development.

Structure

This Conference will provide a multi-stakeholder platform for policy-makers, industry, regulators, development organisations, lawyers, civil society, media, academia, experts and other practitioners to discuss these subjects in a round table setting over a period of two days.

The Conference will begin with the opening session on the first day, i.e. Sunday, 1st December. A total of three sessions (excluding closing session) will be held on the

² Growth in online economy has led to calls for revamping regulation in sectors like banking and insurance, hitherto facing entity based regulation, particularly in developing economies in sub Saharan Africa region.

second day i.e. 2nd December, on chosen themes. Specific actionable ideas will be distilled from the discussion and presented before stakeholders along with a roadmap for making competition and regulatory regimes matter for sustainable development in increasingly online developing world.

About the Conference

The Conference is sixth in the series of conferences jointly organised by CUTS and CIRC every alternate year. The intent has been to examine contemporary issues from developing countries' perspective, home to competition and regulatory regimes of varied maturities, and dealing with unique development related challenges.

The first edition of the conference in 2007 encouraged developing countries to identify political, economy, and governance constraints in adopting efficient competition and regulatory regimes. This was followed by the 2011 edition which stimulated thinking on 'new' set of reforms which can help developing countries address constraints faced by them. The third edition in 2013 offered solutions by displaying different mechanisms for rationalising economic regulation and formulating a converged approach for developing countries.

In 2015, the adoption of sustainable development goals (SDGs) converged with organisation of conference for the first time in African continent. It discussed ways in which developing countries could fine-tune their competition and regulation regimes to make progress towards SDGs. In subsequent years, the role of innovation in fostering sustainable development gained prominence. Consequently, the 2017 edition of conference deliberated the role of regulation and competition regimes in creating appropriate incentives to foster innovation in developing countries.³

³ More details about previous editions of the conference are available at [http://www.cuts-ccier.org/5th Biennial Conference/](http://www.cuts-ccier.org/5th_Biennial_Conference/)

AGENDA

DAY I: SUNDAY, 1 DECEMBER 2019

17:30 – 18:00 | Registration

Opening Session 18:00 – 20:00	Setting the Context: Role of Competition and Regulation in Fostering Development and Reducing Inequalities
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Optimal competition and regulation have been hailed as tools for enabling fair markets to function efficiently and promote economic growth. Economies are rapidly moving beyond ‘mere’ economic growth as an objective towards fostering ‘inclusive and sustainable development’ for their citizens, majority of whom will be online. The forces behind transformation to online economy can have decisive impact on development objectives. In such scenario, it is pertinent to examine the role of regulatory and competition regimes in promoting development and reducing inequalities.

Few pertinent questions in this regard are:

- Have competition and regulatory regimes promoted economic growth at the cost of increasing inequalities? Have they traditionally followed a cautious approach to assess potentially anti-competitive conduct, thus been unable to evolve with times? In this regard, do we need to revisit the traditional understanding of ‘consumer welfare’ approach?
- Can the same ‘toolbox’ which promoted ‘economic growth’ be utilised to foster ‘sustainable and inclusive development’? Do we adapt the ‘toolbox’ by adding new ‘tools’ or look for a new ‘toolbox’ altogether? Does the classical approach to ‘level playing field’ needs review when developing economies are promoting their small and medium enterprises?
- How different or difficult it is to promote sustainable development in a rapidly online world, from a majority offline one? Have we underestimated the potential of online economy for sustainable development?
- Does the task become even more complicated in increasingly online developing world, hitherto predominantly not equipped with strong regulatory and competition regimes? Or, is this a blessing in disguise?
- How can the move to an online world be used to promote the goals of sustainable and inclusive development in developing economies? What is the role of competition and regulatory regimes in this regard?

Chair

- **Pradeep S Mehta**, Secretary General, CUTS International

Speakers

- **Sangeeta Verma**, Member, Competition Commission of India
- **George K. Lipimile**, Director and Chief Executive Officer, COMESA Competition Commission

- **Amit Kapoor**, Honorary Chairman, Institute for Competitiveness
- **David J. Gerber**, University Distinguished Professor, Chicago-Kent College of Law
- **Baijayant 'Jay' Panda**, National Vice President and Spokesperson, Bhartiya Janata Party and Former Member of Parliament, India
- **Arvind Mayaram**, Chairman, CUTS Institute for Regulation and Competition & Former Finance Secretary, Government of India

Dinner | **20:00 onwards**

DAY II: MONDAY, 2 DECEMBER 2019

Registration | 09:00 – 09:30

**Session 1
09:30 – 11:00**

Putting our Fears on the Table: An Honest Assessment of Challenges Posed by the Online Economy and Responses Thereto

The global online economy is dominated by few large internet firms, most of whom are facing allegations of abuse of dominance and disregarding consumer welfare. However, a large section counts such firms among the most innovative, productive and consumer friendly. Accordingly, responses to challenges of online economy have differed with jurisdictions. There is a need to undertake an honest assessment of unique challenges posed by online economy in different jurisdictions and responses thereto. Given that global internet firms are sufficiently entrenched in developing economies; their responses will need to take into account impact on other stakeholders in online ecosystem.

Few questions in this regard are:

- What are the key allegations against large internet firms? Can some actions of big tech firms be considered reasonable business strategies?
- What have been the key responses to practices of large internet firms, and have they been effective? Is there any perceived change in behaviour of such firms?
- Some challenges posed by online economy fall at intersection of competition law and other cross-cutting issues like privacy regulation, industrial policies, consumer protection etc. Some others fall at intersection with specific sectors like e-commerce, fintech, mobility, etc. Have competition and regulatory regimes been successful in forging consistent and coherent responses to the challenges?
- What lessons developing economies can learn from responses by advanced economies to challenges of online economy? Is there a need to be more vigilant and proactive? Should competition agencies be encouraged to intervene while improving their enforcement capacities? Should dedicated sector-neutral regulatory agencies be urgently constituted to deal with complex issues of data use and privacy? Or, have developing economies already missed the bus?

Chair

- **Rene Van Berkel**,
Representative,
Regional Office, India,
United Nations
Industrial
Development
Organization

Presenters

- **Caron Beaton-Wells**,
Professor, The
University of
Melbourne
- **Raju Parakkal**,
Associate Professor,
Thomas Jefferson
University

Discussants

- **Barak Y. Orbach**,
Professor, University of
Arizona James E.
Rogers College of Law
- **Jonathan Wong**, Chief
of Technology and
Innovation, UN
Economic and Social
Commission for Asia

and the Pacific

- **Payal Malik**, Adviser (Economics) & Head Economics Division, Competition Commission of India
- **Thomas Cheng**, Associate Professor, The University of Hong Kong

Tea | 11:00 - 11:30

Session 2
11:30 – 13:00

The Special Case of Developing Economies: Are they Uniquely Placed in Online Economy? What Measures Can They Formulate to Leverage Online Economy for Sustainable Development?

Developing economies have a rapidly enhancing user base for data driven services. They are also one of the biggest sources of user data, analysed to offer customised services, and retain consumers, by large internet firms. It is believed that lack of access to user data may disincentivise innovation and potential competitors. Most users in developing economies are unlikely to be aware of their rights in online economy and mechanisms to enforce them. Developing economies are also more likely to have evolving regulatory and competition regimes, hitherto susceptible to vested interests and government pressure. They also need to promote domestic enterprises and ensure creation of decent livelihood opportunities. Any possible response by developing economies to online economy will need to take into account all these factors.

Few questions in this regard are:

- What are the unique features in developing economies which can be leveraged to formulate appropriate response to challenges posed by online economy? How can online economy be used to contribute to sustainable development in developing economies?
- What are key shortcomings of regulatory and competition regimes in developing economies which may have hindered designing and implementation of appropriate responses to online economy? How could these deficiencies be addressed? How could users be appropriately empowered to exercise their rights and responsibilities in online economy, which could contribute to furthering sustainable development?
- Developing economies have started to take initial steps in regulating online economy. Some measures include: creating dedicated regulatory agencies on privacy and data protection⁴; restrictions on cross border data flow⁵; unilateral actions to tax digital firms⁶; reviewing intellectual property regimes⁷, etc. Are these steps in right direction or motivated by vested interests? Additional issues with which digital economies are grappling with include: can data be considered as essential facility, can network effects constitute barriers to entry, etc. What frameworks can be designed to guide developing economies navigate these issues?
- Developing economies are dealing with their unique set of challenges, such as: ensuring creation of adequate income generation opportunities, promote domestic small and medium enterprises, reduce inequality, etc. Does the online economy provide a new opportunity for developing economies to meet their goals? Or, are such problems likely to exacerbate in online economy? Should the nature of regulation in developing countries differ from advanced economies on account of these challenges?

⁴ The draft Personal Data Protection Bill of India proposes to constitute a Data Protection Authority

⁵ Countries like Brazil, China, and Russia have adopted data localisation policies putting stringent restrictions on cross border data flow

⁶ Countries like Vietnam and Indonesia have proposed taxation of global internet firms

⁷ Issues like licensing of standard essential patents, and licensing in specific sectors (like agri-biotech) have emerged in countries like India

Chair

- **Amit Kapoor**,
Honorary Chairman,
Institute for
Competitiveness

Presenters

- **David J. Gerber**,
University
Distinguished
Professor, Chicago-
Kent College of Law
- **Garima Sodhi**, Senior
Fellow, CUTS Institute
for Regulation &
Competition

Discussants

- **Joel Abraham**, CEO,
Fijian Competition and
Consumer Commission
- **Seema Gaur**, Chief
Economic Adviser,
Department of Rural
Development,
Government of India
- **Janis Racko**, Member
of the Council, The
Competition Council of
Latvia
- **Kusha Haraksingh**,
Immediate Past
Chairman and
Commissioner, Caricom
Competition
Commission
- **Duangthip
Chomprang**, Director,
International Institute
for Trade and
Development

Lunch | **13:00 – 14:00**

Session 3
14:00 – 15:30

Interface Between Competition Regime and Sector Specific Regimes in Online Economy: Challenges and Opportunities in Developing Economies

Online economy has challenged the status quo across sectors, such as, mobility, retail, finance, health, et al. Unique features like two-or-more sided markets, network effects within and across groups, reliance on data, pricing strategies, focus on non-price factors, have changed the way business was traditionally done. Sector-neutral and sector-specific regulators need to improve coordination among themselves to develop a consistent approach towards online economy.

Few questions in this regard are:

- How is online economy disrupting traditional business models across sectors? Given the rise of artificial intelligence, internet of things, distributed ledger, virtual reality, and similar technologies, this disruption is expected to reach to the next level. What will its likely form be?
- Are different sectors differently impacted by online economy? For instance, do key concerns in e-commerce sector relate to creating livelihood opportunities⁸, and in healthcare sector relate to protecting sensitive personal information? How similarly or differently placed these concerns are? Accordingly, are unique sector specific strategies the key to tackle and leverage potential of online economy?
- How have sector-specific regulators coordinated with competition regulators in the past to deal with sector specific challenges of online economy? How effective has been their response? Are these regulators prepared to deal with emerging challenges in the areas of ethics and human rights?
- What can competition and sector regulators in developing economies from experience learn from each other to tackle challenges of online economy and leverage it for sustainable development?

Chair

- **George K. Lipimile**,
Director and Chief
Executive Officer,
COMESA Competition
Commission

Presenters

- **Ryohei Yoshinari**,
Assistant Director (ICN
matters), Japan Fair
Trade Commission
- **Pierre Horna**, Legal
Affairs Officer,
Competition and
Consumer Policies
Branch, UNCTAD

Discussants

- **Sayanti Chakrabarti**,
Joint Director
(Economics),
Competition
Commission of India
- **Geeta Gouri**, Former
Member, Competition
Commission of India
- **Abdullah Hussain**,
Partner, L&L Partners

⁸ It has been reported that the Competition Commission of India has initiated a study of e-commerce market, to identify possible impediments to competition. See, https://www.cci.gov.in/sites/default/files/press_release/ccipress.pdf

- **Peter Misi**
Mwencha, Lecturer,
Kenya University

Tea | 15:30 - 16:00

**Closing
Session
16:00 – 17:00**

**Gazing at the Crystal Ball: The Way Forward for
Online Economy in Developing World for
Sustainable Development**

Given the dynamic nature of online economy, and unique challenges faced by developing economies, there is a need for measures to ensure that online economy can be leveraged to contribute to inclusive and sustainable development in developing economies.

Few questions in this regard are:

- How could developing economies convert their uniqueness into strengths to leverage the potential of online economy? Would they be able to rise above vested interests to devise market friendly approaches to use data for development? What would developing economies need to do to ensure that the online economy's benefits flow to their citizens in an equitable manner?
- How could regulatory and competition regimes overcome their weaknesses to tackle the challenges of online economy? Could they become more agile, pre-empt, and respond with a coherent narrative? What lessons do the developed economies offer, and in what ways could developing economies proceed differently, given their unique positions?
- How could sector-specific regulators prepare themselves better in online economy? Can they leverage technology for regulation (RegTech) and supervision (SupTech) along with mechanisms like Regulatory Impact Assessment and Competition Impact Assessment to design optimal interventions?
- What is the role of other stakeholders like civil society and consumer organisations to prepare developing economies for realising the potential of online economy?

Chair

- **Arvind Mayaram**,
Chairman, CUTS
Institute for
Regulation and
Competition &
Former Finance
Secretary,
Government of
India

Rapporteurs

- **Alice Pham**,
Resident
Representative,
HRC, CUTS
International

Speakers

- **Rathin Roy**, Director,
National Institute of
Public Finance and
Policy
- **Amit Kapur**, Joint
Managing Partner, J.
Sagar Associates
- **Allan Asher**, Chair,
Foundation for Effective
Markets & Governance
- **Bipul Chatterjee**,
Executive Director, CUTS
International
